

# WEARING THIN

BARRY DAVIES, PRACTICE DIRECTOR



Movie buffs were all aflutter over Back to the Future Day and how its milestone of 21 October 2015 (the date Marty arrives in the future) became a point of comparison where fact meets fiction. We might not have fully operative hoverboards or flying cars just yet, but we do have some of the movie's other ingenious inventions, such as wearable technology.

Certain products on the market – from the Fitbit and Jawbone to interactive watches and glasses from Pebble and Google – are already big business in a rapidly growing sector. But past market research by IT analysts suggests that the sector will be led by businesses rather than the general consumer. Technology becomes a perk of employment – but is it really a 'people monitor'?

There are concerns already that such corporate monitoring could become widespread in the UK market, and hints abound of an Orwellian scenario of employers as 'big brother'.

Employees have for a long time been expected to keep themselves in a state of good health and general wellbeing as a duty to their employers. Companies write such clauses into the contracts of some senior fee earners, often in conjunction with key personnel insurance policies. This would suggest that those who enjoy good health take fewer sick days and result in being more productive for their firms. So does this mean that such devices could play the role of encouraging healthier people? Some London-based companies (not in the legal sector) use such devices to find out if poor sleep patterns and alcohol intake is a contributing factor to risky professional decisions that their people make.

Although it may seem like an invasive piece of kit, who might embrace it?

In a poll undertaken by PwC, Generation-X workers (my generation, incidentally) could be persuaded to wear a device on the basis of a better work deal. Interestingly, only 38% would accept a device in exchange for sharing the data generated by it – but over half would consent to sharing data if it led to better working conditions, such as where they can work, reduced stress levels and better working hours.

What firms need to be clear on is that they cannot insist that fee earners, or other categories of worker, wear devices unless it's outlined in their employment contracts. Even then there would then be no obligation to wear such devices outside of working hours. The consideration here is how such devices with email functions, for example, would lead people to exceed their time worked, as overseen by the Working Time Directive. The Information Commissioner's Office has also issued a reminder that devices fall under the Data Protection Act. This could cause big headaches when personal data is also being tracked and stored.

Ultimately, this comes down to trust, for both the firm and the employee. How is the firm using its people's personal data? Who has access to it? How can it be deleted? Studies suggest that introducing wearables can improve productivity in the workplace. But communication for their use must be clear. It would be highly recommended that any data gathered via wearables is anonymised and data should cover the whole workforce as opposed to individuals. **LPM**

## ABOUT

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